

Advisory Opinion

IECDB AO 2010-05

April 29, 2010

Allison Kleis
Iowa Progress Project
4225 Fleur Drive, #134
Des Moines, Iowa 50321

Subject: Iowa Progress Project/Independent Expenditures

Dear Ms. Kleis:

This opinion is in response to your letter of February 1, 2010, requesting an opinion from the Iowa Ethics and Campaign Disclosure Board pursuant to Iowa Code section 68B.32A(12) and Board rule 351—1.2. We note at the outset that the Board's jurisdiction is limited to the application of Iowa Code chapters 68A and 68B, Iowa Code section 8.7, and rules in Iowa Administrative Code chapter 351. Advice in a Board opinion, if followed, constitutes a defense to a subsequent complaint based on the same facts and circumstances.

FACTUAL STATEMENT:

You advise us that Iowa Progress Project (IPP) is a grassroots organization incorporated under the laws of Iowa. IPP is interested in making independent expenditures in Iowa expressly advocating the election or defeat of state candidates.

QUESTIONS:

1. Is Iowa Progress Project permitted to make independent expenditures expressly advocating the election or defeat of candidates?
2. If so, must Iowa Progress Project file form IND-EXP with the Iowa Ethics and Campaign Disclosure Board and are the names of donors required to be disclosed?

OPINION:

We first note that in response to the Citizens United v. Federal Election Commission decision that permitted, in part, corporations to engage in express advocacy independent expenditures, Iowa's General Assembly enacted 2010 Iowa Acts, Senate File 2354 that amended Iowa Code section 68A.404 regulating independent expenditures and Iowa Code section 68A.503 regulating corporate contributions. For

ease of response, please consider any references below to Iowa Code sections 68A.404 and 68A.503 as meaning Iowa Code sections 68A.404 and 68A.503 as amended by 2010 Iowa Acts Senate File 2354, sections 3 and 5, effective as of April 8, 2010.

Iowa Code sections 68A.404 and Iowa Code sections 68A.503 permit corporations to make independent expenditures that expressly advocate for or against clearly identified candidates for public office. Thus, under Iowa's campaign laws IPP is permitted to make independent expenditures that expressly advocate the nomination, election, or defeat of candidates.

Turning to your second question, Iowa Code section 68A.404 requires the reporting of independent expenditures and also requires an entity making independent expenditures to file campaign disclosure reports. The Board is in the process of simplifying this process so that an organization could disclose all required information on the independent expenditure form itself. Under the statute the only donors required to be disclosed would be those who gave money for the purpose of furthering the independent expenditure. The statute also exempts from disclosure any dues paying members of an organization. The Board will call an organization filing an independent expenditure an "independent expenditure committee" but this type of committee will be exempt from a number of the disclosure requirements required of other committees. The Board is in the process of adopting the rules that will clarify these requirements and exceptions.

In closing, we note that Iowa Code section 68A.404 requires independent expenditures to be filed electronically with the Board. The Board is in the process of implementing this directive. The new form that is to be filed electronically will reflect the disclosure requirements and exceptions contained in Iowa Code section 68A.404.

BY DIRECTION AND VOTE OF THE BOARD

James Albert, Board Chair
Gerald Sullivan
Betsy Roe
John Walsh
Patricia Harper
Saima Zafar

Submitted by: W. Charles Smithson, Board Legal Counsel